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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES ROJAS,

Defendant and Appellant.

B210695

(Los Angeles County
Super. Ct. No. PA060872)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Alice C. Hill, Judge. Affirmed.

Athena Shudde, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Pamela C. Hamanaka, Assistant
Attorney General, Steven E. Mercer and Taylor Nguyen, Deputy Attorneys General, for
Plaintiff and Respondent.

Appellant James Rojas appeals from the judgment entered following his convictions by jury on count 1 – grand theft of personal property (Pen. Code, § 487, subd. (a)), two counts of forgery (Pen. Code, § 470, subd. (a); counts 2 & 52), four counts of filing a false or forged instrument (Pen. Code, § 115, subd. (a); counts 3, 4, 7, & 54), and three counts of forgery (Pen. Code, § 470, subd. (d); counts 6, 53, & 55). The court sentenced appellant to prison for a total unstayed term of seven years.

FACTUAL SUMMARY

Viewed in accordance with the usual rules on appeal (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence, the sufficiency of which is undisputed, established as follows.¹ In January 2005, Alvin Carranza purportedly executed a deed (the Carranza deed) conveying title to his Long Beach condominium to appellant. Carranza's signature and the notarization thereof were forged (count 2). In June 2005, John Harrison loaned appellant money and secured the loan by a trust deed on the condominium. In June 2005, appellant caused the Carranza deed to be recorded (count 3).

In September 2005, Claude Burke purportedly executed a deed (the Burke deed) conveying title to his Bakersfield home to Ray Aispuro, appellant's brother-in-law. Burke's signature and the notarization thereof were forged (count 52). Appellant recorded the Burke deed (count 54). At some point, a person other than Burke obtained a loan and secured it by a forged trust deed on the home. As a result of a meeting between Burke, Aispuro, and appellant, Burke's property was reconveyed to him. Appellant paid Burke back the amount of the loan.

CONTENTIONS

Appellant presents related claims that multiple punishment on counts 2 and 3 violated Penal Code section 654, as did, according to appellant, multiple punishment on counts 52 and 54.

¹ There is no dispute that all of appellant's convictions in this case were proper and that there was sufficient evidence to support them. We recite the facts pertinent only to counts 2, 3, 52, and 54, the counts at issue.

DISCUSSION

Penal Code Section 654 Did Not Bar Multiple Punishment on Counts 2, 3, 52, or 54.

1. Pertinent Facts.

An amended information alleged as count 2 that on or about January 23, 2005, appellant committed forgery in violation of Penal Code section 470, subdivision (a), by signing Carranza's name to the Carranza deed. The amended information alleged as count 3 that on or about January 23, 2005, the crime of "attempt to file false or forged instrument" (capitalization omitted) was committed by appellant "who did unlawfully and knowingly procure and offer a false and forged instrument, to wit: [the Carranza deed] to be filed, registered, and recorded in a public office" (Some capitalization omitted.)

The amended information alleged as count 52 that on or about September 8, 2005, appellant committed forgery in violation of Penal Code section 470, subdivision (a), by signing Burke's name to the Burke deed. The amended information alleged as count 54 that on or about September 8, 2005, the crime of "attempt to file false or forged instrument" (capitalization omitted) was committed by appellant "who did unlawfully and knowingly procure and offer a false and forged instrument, to wit: [the Burke deed] to be filed, registered, and recorded in a public office" (Some capitalization omitted.)

On counts 2 and 52, the jury convicted appellant of forgery. On counts 3 and 54, the jury convicted appellant of "fil[ing] false or forged instrument, in violation of Penal Code section 115(a)[.]" (Some capitalization omitted.)

At the September 8, 2008 sentencing hearing, the court, during sentencing discussions, stated, "[a]t trial there was evidence relating to essentially two pieces of property, the Long Beach property as well as the Claude Burke property. Counts 1, 2, 3, 4, 6 and 7 relate to the Long Beach property. As to those, I found that there were two objectives that the defendant had, Mr. Rojas. One was to steal money from John Harrison, and the second was to obtain illegal control of the property so he could obtain other monies from legal control."

The court continued, “[h]owever, the defendant also . . . in that transaction procured a forged instrument for recording, in violation of Penal Code section 115. Under the terms of Penal Code section 115 (d), those are separate punishable offenses, and I treated them as such. . . . Essentially, the courts have recognized, and the case that is the guiding case in this area, I believe, is [*People v. Gangemi* (1993) 13 Cal.App.4th 1790 (*Gangemi*)]. In that case, the court observed each act, in violation of section 115, is a separate harm to the integrity of public records, and therefore may be punished separately and that’s what I followed. So I think that each act of 115 may be punished separately. Otherwise, they merge and that’s how I treated them.”

The court then stated, “I treated 1 and 4 as having their object theft from John Harrison, that’s count 1 and 4. [¶] And counts 2, 3, 6 and 7, as having their object obtaining control of the property.”

Finally, the court stated, “And counts 52 through 55 have as their object the goal of obtaining the property from Claude Burke. So I treated those separately for 654 purposes, but again because there is a 115 allegation, that is sentenced separately.”

Appellant’s prison sentence included consecutive subordinate terms of eight months for each of counts 2, 3, 52, and 54. When imposing sentence on count 3, the court stated, “Penal Code section 115(d) excludes provision of . . . Penal Code section 654. Each act, in violation of section 115 is a separate harm to the integrity of the public records, because the manner in which the crime was carried out indicates planning, sophistication and professionalism.” When imposing sentence on count 54, the court stated “[t]hat is eight months in light of the provision of Penal Code section 115(d).”

2. Analysis.

Appellant claims multiple punishment on counts 2 and 3 violated Penal Code section 654, as did, appellant argues, multiple punishment on counts 52 and 54.² We disagree.

² Appellant’s argument is not that the trial court erroneously imposed consecutive as opposed to concurrent sentences on these counts, but that multiple punishment of any

Penal Code section 654 states, in relevant part, “(a) An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” In *People v. Kwok* (1998) 63 Cal.App.4th 1236 (*Kwok*), the court stated, “Although section 654 literally applies only where multiple statutory violations arise out of a single ‘act or omission,’ it has also long been applied to cases where a ‘course of conduct’ violates several statutes. (*Neal v. State of California* (1960) 55 Cal.2d 11, 19 . . . ; [citation].) A ‘course of conduct’ may be considered a single act within the meaning of section 654 and therefore be punishable only once, or it may constitute a ‘divisible transaction’ which may be punished under more than one statute. (*Neal v. State of California, supra*, at p. 19; [citation].) Whether the acts of which a defendant has been convicted constitute an indivisible course of conduct is a question of fact for the trial court, and the trial court’s findings will not be disturbed on appeal if they are supported by substantial evidence. [Citations.]

“In what has been characterized as a ‘judicial gloss’ on the language of section 654 [citations], the basic test used for determining whether a ‘course of conduct’ is divisible was stated in *Neal* as follows: ‘Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.’ [Citation.]” (*Kwok, supra*, 63 Cal.App.4th at pp. 1252-1253, italics added.)

“Whether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination. [Citations.] Its findings will not be reversed on appeal if there is any substantial evidence to support

kind as to counts 2 and 3, and multiple punishment of any kind as to counts 52 and 54, violated Penal Code section 654.

them. [Citations.]” (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.) This includes the trial court’s implied findings. (*People v. Nguyen* (1988) 204 Cal.App.3d 181, 190 (*Nguyen*).) The purpose of Penal Code section 654 is to insure that a defendant’s punishment is commensurate with culpability. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1211.)

As indicated above, the rule that Penal Code section 654 applies to bar multiple punishment for an indivisible course of conduct as determined by the intent and objective of the actor is a judicial one. (*Kwok, supra*, 63 Cal.App.4th at p. 1253.) However, the legislature may create exceptions to Penal Code section 654 (see *People v. Benson* (1998) 18 Cal.4th 24, 32) independent of that judicial rule.

Gangemi, supra, 13 Cal.App.4th 1790, is illuminating. In that case, a defendant was convicted on multiple counts alleging he offered false or forged instruments for filing in a public office in violation of Penal Code section 115.³ (*Gangemi*, at p. 1793, fn. 1.) The court imposed a Penal Code section 115.5, subdivision (a)⁴ enhancement fine

³ Penal Code section 115, states, “(a) Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony. [¶] (b) Each instrument which is procured or offered to be filed, registered, or recorded in violation of subdivision (a) shall constitute a separate violation of this section. [¶] (c) Except in unusual cases where the interests of justice would best be served if probation is granted, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons: [¶] (1) Any person with a prior conviction under this section who is again convicted of a violation of this section in a separate proceeding. [¶] (2) Any person who is convicted of more than one violation of this section in a single proceeding, with intent to defraud another, and where the violations resulted in a cumulative financial loss exceeding one hundred thousand dollars (\$100,000). [¶] (d) For purposes of prosecution under this section, each act of procurement or of offering a false or forged instrument to be filed, registered, or recorded shall be considered a separately punishable offense.”

⁴ Penal Code section 115.5, subdivision (a) states, “Every person who files any false or forged document or instrument with the county recorder which affects title to, places an encumbrance on, or places an interest secured by a mortgage or deed of trust on, real property consisting of a single-family residence containing not more than four dwelling

on each of two such counts. (*Gangemi*, at pp. 1793-1794, 1799-1800.) Penal Code section 115, subdivision (a), provides, “Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.” Penal Code section 115, subdivision (d), provides, “For purposes of prosecution under this section, each act of procurement or of offering a false or forged instrument to be filed, registered, or recorded shall be considered a separately punishable offense.”

The defendant in *Gangemi* claimed imposition of the two fines constituted multiple punishment violative of Penal Code section 654. (*Gangemi*, *supra*, 13 Cal.App.4th at pp. 1793, 1799.) *Gangemi* noted that “[t]he section is not applicable where the defendant has entertained multiple criminal objectives which were independent of and not incidental to each other, even though the violations were parts of an otherwise indivisible course of conduct.” (*Id.* at p. 1799.)

Gangemi rejected the defendant’s Penal Code section 654 claim. (*Gangemi*, *supra*, 13 Cal.App.4th at p. 1800.)⁵ After quoting Penal Code section 115, subdivision (d), *Gangemi* stated, “This language demonstrates an express legislative intent to exclude section 115 from the penalty limitations of section 654. Thus, the Legislature has unmistakably authorized the imposition of separate penalties for each prohibited act even though they may be part of a continuous course of conduct and have the same objective. (See *People v. Djekich* (1991) 229 Cal.App.3d 1213, 1220-1225 . . . [10 fines may be imposed for 10 days of violating zoning ordinance].) We conclude that each false filing is separately punishable.” (*Gangemi*, at p. 1800.)

units, with knowledge that the document is false or forged, is punishable, in addition to any other punishment, by a fine not exceeding seventy-five thousand dollars (\$75,000).”

⁵ *Gangemi* ultimately concluded that imposition of the fines was impermissible, but not on Penal Code section 654 grounds. (*Gangemi*, *supra*, 13 Cal.App.4th at pp. 1796-1798.)

In effect, then, *Gangemi* concluded that Penal Code section 115, subdivision (d) constituted a legislative exception to Penal Code section 654; therefore, multiple punishment (fines) for violations of Penal Code section 115, subdivision (a) was not barred by Penal Code section 654.

Gangemi later observed that even if Penal Code section 115.5 was not an enhancement but was treated as a separate offense, Penal Code section 654 did not bar multiple punishment (fines) for the violations at issue. (*Gangemi, supra*, 13 Cal.App.4th at p. 1800.) *Gangemi* stated, “[h]ere, defendant filed several false deeds of trust with the . . . [c]ounty [c]lerk. Each offense was complete upon knowingly offering that false document for filing, and one act was not a means to the end of any of the others. It is no defense to assert that these acts were part of an indivisible transaction which had as its single criminal objective the illegal protection of . . . property from . . . creditors. . . . such an objective is too broad to satisfy the purposes of section 654.” (*Id.* at pp. 1800-1801.)

Gangemi later stated, “Each false filing creates a separate harm to the person defrauded as well as to the integrity of the public records and the defendant may be punished for each such criminal act. Otherwise, to apply section 654 in this case would violate the law’s goal of punishing violators commensurate with their criminality.” (*Gangemi, supra*, 13 Cal.App.4th at p. 1801.) This analysis would appear to apply to multiple violations of Penal Code section 115 as well.

Gangemi’s rationale thus supports the position that Penal Code section 654 does not bar multiple punishment for violations of Penal Code section 115 for two separate reasons, i.e., (1) Penal Code section 115, subdivision (d) creates a legislative exception to Penal Code section 654 and (2) each violation of Penal Code section 115, involves an independent criminal objective which is not incidental to the criminal objective of another such violation.

In the present case, the trial court concluded that counts 2 and 3 had “as . . . their object obtaining control of the property,” and counts 52 and 54 had “as their object the goal of obtaining the property from Claude Burke.” We need not decide whether appellant, when committing counts 2 and 3, had independent criminal objectives with the

result that Penal Code section 654 did not bar multiple punishment on those counts. Similarly, we need not decide whether appellant had independent criminal objectives when committing the offenses at issue in counts 52 and 54, with the result that Penal Code section 654 did not bar multiple punishment on those counts.

As mentioned, whether appellant committed counts 2 and 3 as part of an indivisible transaction because he had a single criminal objective when committing those counts, and whether appellant committed counts 52 and 54 as part of such an indivisible transaction, addresses only the issue of whether the judicial gloss, that Penal Code section 654 does not apply to an indivisible course of conduct, applies in the present case.

However, leaving aside this judicial interpretation of Penal Code section 654, we note that *Gangemi* concluded that multiple punishment for violations of Penal Code section 115, subdivision (a), was not barred by Penal Code section 654 because Penal Code section 115, subdivision (d) created an express legislative exception to Penal Code section 654. We believe that exception applies here, and that multiple punishment on counts 2 and 3, and multiple punishment on counts 52 and 54, did not violate Penal Code section 654 because each of counts 3 and 54 were violations of Penal Code section 115, subdivision (a); therefore, Penal Code section 115, subdivision (d) applied to each of counts 3 and 54.

We realize that *Gangemi* involved multiple punishment for multiple violations of Penal Code section 115, subdivision (a), whereas, in the present case, counts 2 and 3 involved forgery and a violation of Penal Code section 115, subdivision (a), respectively, and this is true as to counts 52 and 54, respectively, as well. However, the purpose of Penal Code section 654 is to insure that a defendant's punishment is commensurate with culpability. (*People v. Latimer, supra*, 5 Cal.4th at p. 1211.)

Even assuming that, under the judicial interpretation of Penal Code section 654, counts 2 and 3 might be viewed as part of an indivisible transaction given the intent and objective of appellant, and that counts 52 and 54 might similarly be so viewed, with the result that Penal Code section 654 might otherwise bar multiple punishment on each of those sets of counts, we do not believe that result should obtain here. If it did, the result

would be as if (1) Penal Code section 115, subdivision (d) as a legislative exception to Penal Code section 654, and (2) the fact that each violation of Penal Code section 115, subdivision (a), involves a separate harm to the person defrauded as well as to the integrity of public records, were irrelevant considerations. That is, the result would be as if appellant committed no Penal Code section 115 offenses. However, that result would not insure punishment commensurate with culpability. Multiple punishment on counts 2 and 3, and on counts 52 and 54, did not violate Penal Code section 654.

DISPOSITION

The judgment is affirmed.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.